

Summary

General and individual exemptions in the provision of state aid under European law

This diploma thesis refers to the European regulation of the provision of state aid by member states. Because of the fact that under certain circumstances state aid can affect the economic competition among concurrents both within a member state and within the internal market of the EU and thus have a significant bad influence on it, art. 107 subsection 1 of the Treaty on the Functioning of the European Union (TFEU) states a general interdiction of providing state aid by the member states. It defines state aid as financial aid in any form (direct grant, soft loan, tax allowance, interest subsidy etc.), paid out of financial resources belonging to the state („state“ defined in a large sense as both the central state sphere and local government sphere), which give preferential treatment to certain companies or certain production sectors and thereby affects or may affect competition, and lastly which have an influence on business between the member states (have an effect on the internal market).

Of course there have to be exemptions from this general interdiction. The exemptions are regulated in art. 107 subsection 2 TFEU (general exemptions) and 3 TFEU (individual exemptions). There are three general exemptions: firstly it is aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned; secondly it is aid to compensate for the damage caused by natural disasters or exceptional occurrences, and lastly aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. The specificity of the general exemptions is that they are being compatible with the internal market as such, providing of state aids under these exemptions does not have to be authorised, their exercise does not depend on any decision of the Commission.

Much more frequently used are the individual exemptions. There the provision of state aid has to be assessed by the Commission, has to fulfill criteria set up by the Commission. They read as follows: To begin with there is aid to promote

the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, shortly regional aid. Then there is aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State. This exemption category was often used to remedy huge financial losses mainly of bank institutions which have emerged due to the recent economic crisis. The third exemption is aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. This is the „largest formulated“ exemption category, particular forms of state aid provided under it are various. There is also the „cultural aid“, namely aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest. And finally the „operative“ exemption of such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

It depends on the Commission's administrative discretion whether it will authorise the provision of aid, consider it as being compatible with the policy on the internal market, or prohibit it through a negative decision. In order to assess and authorise particular cases of aid provided by the member states, the Commission has adopted many regulations, in form of communications or even directives, which specify and regulate the above mentioned exemptory fields, set up conditions which have to be fulfilled for the aid being authorised. A large part of this diploma thesis refers to these regulations (towards the final pages of the thesis you can find a chart of them) and brings also examples of their particular application in cases connected to Czech Republic as member state.

On the whole, this diploma thesis brings up a comprehensive view of the general and individual exemptions, regulations and the most important ECJ-cases related to them.

Keywords

- ❖ State Aid
- ❖ Assessment of State Aid under European law
- ❖ General exemptions, Individual exemptions
- ❖ related ECJ case law